

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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J.M.,

Plaintiff,

**COMPLAINT**

-against-

THE ROMAN CATHOLIC DIOCESE OF ALBANY, NEW YORK; a/k/a THE MOST REVEREND, EDWARD B. SCHARFENBERGER, as Bishop and Corporate Sole of the DIOCESE OF ALBANY; ST. COLMAN'S HOME; and SISTERS OF THE PRESENTATION OF THE BLESSED VIRGIN MARY, ALBANY, NEW YORK,

Index No. \_\_\_\_\_

Defendants.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, J.M., by and through undersigned counsel, respectfully shows to this Court and alleges as follows:

**Introduction**

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-g. The Plaintiff, when she was a minor, was sexually assaulted by Sister Regina a nun employed at St. Colman's Home, a Catholic orphanage located within the jurisdiction of the Diocese of Albany.

**Parties, Jurisdiction and Venue**

1. Plaintiff, J.M., is a citizen and resident of the State of Texas. Plaintiff brings this Complaint using her initials because of the sensitive nature of the allegations of child sexual abuse in the Complaint, which is a matter of the utmost intimacy. Plaintiff fears embarrassment and

further psychological damage if her identity as a victim of child sexual abuse were to become publicly known. Her identity will be made known to Defendant, at the latest, upon service of the Summons and Complaint.

2. Defendant, The Roman Catholic Diocese Of Albany, New York, and Edward B. Scharfenberger, as Bishop and Corporate Sole of the Diocese Of Albany (hereafter, the “Diocese” or the “Diocese of Albany”), is a religious institution and organization with principal offices located at 40 North Main Avenue, Albany, New York, 12203. The Diocese of Albany controls all Catholic religious, pastoral and educational functions in the counties of Albany, Columbia, Delaware, Fulton, Greene, southern Herkimer, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, and Washington, New York. The Diocese operates and controls approximately 129 parishes and 274 schools. Defendant Diocese controls all Catholic institutions within its jurisdiction, including Defendant St. Colman’s Home. Any Catholic institution ministering within the Diocese’s territory may only do so with the authority of Diocese. The Diocese is a citizen and resident of the State of New York.

3. Defendant, St. Colman’s Home, is a Catholic orphanage located in Watervliet, New York within the Diocese of Albany. The orphanage is operated by Defendant Sisters of the Presentation of the Blessed Virgin Mary. The orphanage is located within the jurisdiction of the Diocese of Albany and is subject to the Diocese’s control.

4. Defendant Sisters of the Presentation of the Blessed Virgin Mary (hereinafter referred to as the “Sisters of the Presentation”) is a religious order within the Catholic Church. Sister of the Presentation operate charitable institutions, such as St. Colman’s Home, within Diocese of Albany’s territory and are subject to the control of the Diocese of Albany.

5. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

6. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

7. Personal jurisdiction lies over Defendants as they are present and domiciled in the State of New York.

8. Venue of this action lies in Albany County as a substantial part of the events or omissions giving rise to the claim occurred in Albany County or one of the Defendants resides in Albany County.

#### **Facts of Sexual Abuse**

9. In approximately 1957, J.M.'s mother had a nervous breakdown and as a result, J.M. and six of her siblings were sent to St. Colman's Home in Watervliet, NY. St. Colman's was an orphanage operated by the Sisters of the Presentation of the Blessed Virgin Mary under the control of the Diocese of Albany.

10. J.M. suffered severe sexual, mental and physical abuse by the nuns at St. Colman, particularly from Sister Regina.

11. On one occasion, when J.M. was approximately 13 years old, she met with Sister Regina because she had her period. Sister Regina did not believe J.M. had her period and instead demanded that J.M. expose her vagina to Sister Regina.

12. Sister Regina then forcibly inserted her fingers inside of J.M.'s vagina without the consent of J.M., causing severe physical, emotional and psychological harm.

13. At all relevant times, the Defendants knew or, in the exercise of reasonable care, should have known that Sister Regina had a propensity for the conduct which caused injury to Plaintiff, in particular, that she had a propensity to engage in the sexual abuse of children.

14. At all relevant times, it was reasonably foreseeable to the Defendants that Sister Regina would commit acts of child sexual abuse or assault on a child.

15. At all relevant times, the Defendants knew or should have known that Sister Regina was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to her counsel, care and/or protection.

16. With such actual or constructive knowledge, the Defendants provided Sister Regina unfettered access to Plaintiff and gave her the opportunity to commit foreseeable acts of child sexual abuse or assault.

#### **Nature of Conduct Alleged**

17. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53), and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

18. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendants acted with reckless disregard for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Sister Regina, to retain Sister Regina with unfettered access to children.

**COUNT I**  
**NEGLIGENCE**

(against St. Colman's Home)

19. Plaintiff repeats and realleges Paragraphs 1 through 18 above.

20. At all material times, St. Colman's and Plaintiff were in a special relationship in which St. Colman's Home owed Plaintiff a duty of reasonable care.

21. At all material times, St. Colman's Home and Sister Regina were in a special relationship of employer – employee, in which St. Colman's Home owed a duty to control the acts and conduct of Sister Regina to prevent foreseeable harm.

22. St. Colman's Home owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while she was under the care, custody or in the presence of St. Colman's Home. St. Colman's Home duties encompassed the retention and supervision of Sister Regina and otherwise providing a safe environment for Plaintiff.

23. St. Colman's Home breached these duties by failing to protect the minor J.M. from sexual assault and lewd and lascivious acts committed by agents and employees of St. Colman's Home.

24. At all relevant times, St. Colman's Home created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

25. At all relevant times St. Colman's Home had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

26. As a direct and proximate result of St. Colman's Home's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

27. St. Colman's Home's acts and conduct shows a reckless or willful disregard for

the safety and well-being of J.M.

WHEREFORE, Plaintiff demands judgment against St. Colman's Home for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

**COUNT II**  
**NEGLIGENCE**

(against the Diocese of Albany)

28. Plaintiff repeats and realleges Paragraphs 1 through 18 above.

29. At all material times the Diocese, as principal, and St. Colman's, as agent, were in an agency relationship, such that the St. Colman's acted on the Diocese's behalf, in accordance with the Diocese's instructions and directions on all matters, including those relating to personnel. The acts and omissions of St. Colman's were subject to the Diocese's plenary control, and St. Colman's consented to act subject to the Diocese's control.

30. At all material times, the Diocese and Plaintiff were in a special relationship in which the Diocese owed Plaintiff a duty of reasonable care.

31. At all material times, the Diocese and Sister Regina were in a special relationship of employer – employee, in which the Diocese owed a duty to control the acts and conduct of Sister Regina to prevent foreseeable harm.

32. The Diocese owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while she was under the care, custody or in the presence of the Diocese. The Diocese's duties encompassed the retention and supervision of Sister Regina and otherwise providing a safe environment for Plaintiff.

33. The Diocese breached these duties by failing to protect the minor J.M. from sexual assault and lewd and lascivious acts committed by an agent and employee of the Diocese.

34. At all relevant times, the Diocese created an environment which fostered child

sexual abuse against children it had a duty to protect, including Plaintiff.

35. At all relevant times, the Diocese had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

36. As a direct and proximate result of the Diocese's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

37. The Diocese's acts and conduct shows a reckless or willful disregard for the safety and well-being of J.M.

WHEREFORE, Plaintiff demands judgment against the Diocese of Albany for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

**COUNT III**  
**NEGLIGENCE**

(against the Sisters of the Presentation)

38. Plaintiff repeats and realleges Paragraphs 1 through 18 above.

39. At all material times the Sisters of the Presentation, as principal, and St. Colman's, as agent, were in an agency relationship, such that St. Colman's acted on the Sisters of the Presentation's behalf, in accordance with the Sisters of the Presentation's instructions and directions on all matters, including those relating to personnel. The acts and omissions of St. Colman's were subject to the Sisters of the Presentation's control, and St. Colman's consented to act subject to the Sisters of the Presentation's control.

40. At all material times, the Sisters of the Presentation's and Plaintiff were in a special relationship, in which the Sisters of the Presentation owed Plaintiff a duty of reasonable care.

41. At all material times, the Sisters of the Presentation and Sister Regina were in a special relationship of employer – employee, in which the Sisters of the Presentation owed a duty to control the acts and conduct of Sister Regina to prevent foreseeable harm.

42. The Sisters of the Presentation owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of the Sisters of the Presentation. The Sisters of the Presentation's duties encompassed the retention and supervision of Sister Regina and otherwise providing a safe environment for Plaintiff.

43. The Sisters of the Presentation breached these duties by failing to protect the minor J.M. from sexual assault and lewd and lascivious acts committed by an agent and employee of the Sisters of the Presentation.

44. At all relevant times, the Sisters of the Presentation created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

45. At all relevant times, the Sisters of the Presentation had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

46. As a direct and proximate result of the Sisters of the Presentation's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

47. The Sisters of the Presentation's acts and conduct shows a reckless or willful disregard for the safety and well-being of J.M.

WHEREFORE, Plaintiff demands judgment against the Sisters of the Presentation for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.



**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial in this action.

Dated: New York, New York  
August 14, 2019

Respectfully submitted,

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